

2019-UNAT-956, Ladu

UNAT Held or UNDT Pronouncements

UNAT held that UNDT did not err and that clear and convincing evidence established that the Appellant participated in an attempted taking of property belonging to the Organisation. UNAT held that UNDT did not err in concluding that the disciplinary sanction of dismissal from service was proportionate and lawful. On the Appellant's claim that the items were "garbage", UNAT held that this claim was entirely without merit as the evidence showed that the items included over USD 5,000 worth of material, including boxes of new floor tiles. On the Appellant's claim that UNDT failed to fully assess the new facts presented by a witness, UNAT considered the testimony lacked credibility. Recalling that some degree of deference must be given to the factual findings of UNDT, UNAT held that the Appellant failed to explain in what way the alleged factual errors of UNDT resulted in a manifestly unreasonable decision, warranting the intervention of UNAT. Agreeing with the finding of UNDT, UNAT held that the established facts amounted to serious misconduct. UNAT held that given the seriousness and degree of the Appellant's misconduct, the sanction of dismissal was not unreasonable, absurd, or disproportionate and that it was a reasonable exercise of the Secretary-General's discretion to determine that participating in an attempted theft rendered the Appellant unfit for further service with the Organisation. UNAT held that the key elements of the Appellant's right to due process were met and UNAT found no error in the UNDT finding that there were no breaches of the Appellant's due process rights during the investigation and disciplinary process. UNAT held that, even if some violations of the Appellant's due process rights had occurred due to his alleged limited understanding of English, they were cured during the oral proceedings before UNDT. UNAT recalled the no-difference principle considering the Appellant's own concession of the basis of the charges against him, i. e., that he had participated in the unauthorized attempt to remove UNMISS property. With respect to the Appellant's claims regarding bias and unfairness, UNAT held that UNDT did not commit any errors of procedure such as to affect the decision of the case. Noting UNDT's wide discretion in matters of case management, UNAT held that it was in UNDT's discretion to give some directions to

the Appellant's legal representative and that these statements did not reflect bias against the Appellant. UNAT noted that the Appellant failed to explain how the alleged bias affected the decision of the case. UNAT rejected the Appellant's claim for compensation. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested his dismissal from service for attempting to remove, without authorization, building materials and household properties belonging to the United Nations Mission in South Sudan (UNMISS). UNDT dismissed the application, finding that the Administration had proven the case of misconduct against him by clear and convincing evidence. UNDT further concluded that the sanction of dismissal was proportionate and consistent with the Secretary-General's usual practice in disciplinary cases involving theft.

Legal Principle(s)

UNAT is competent to hear appeals from an international organization or other entities participating in the common system of conditions of service where a special agreement has been concluded which accepts the jurisdiction of UNAT. However, such a special agreement may only be concluded where the organization or entity utilizes a neutral first instance process that includes a written record and written decision providing reasons, fact and law.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Ladu

Entity

UNMISS

Case Number(s)

2019-1254

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Oct 2019

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Disciplinary matters / misconduct

Disciplinary measure or sanction

Dismissal/separation

Discrimination and other improper motives

Due process

Legal services (OSLA or other) and self-representation

Legal representation

Applicable Law

Staff Regulations

- Regulation 1.2(b)

Staff Rules

- Rule 10.1

UNDT RoP

- Article 12.1

Related Judgments and Orders

UNDT/2019/032